

## LABOUR DEPARTMENT

The 1st October, 1982

No. 9(1)82-PV-6Lab/9172.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of Haryana Roadways, Ambala.—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,  
HARYANA, FARIDABAD

Reference No. 139 of 1979

(Ref. No. 326-Fbd of 1981)

between

SHRI KISHAN SINGH, WORKMAN AND THE RESPONDENT MANAGEMENT OF HARYANA  
ROADWAYS, AMBALA

*Appearances:—*

Workman in person.

Shri S. N. Gaur, for the respondent-management.

## AWARD

This reference No. 139 of 1979 (326-Fbd. of 1981) has been referred to the Labour Court, Rohtak by the Hon'ble Governor of Haryana,—*vide* his order No. Amb/15-79/30882, dated 5th July, 1979, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Kishan Singh, workman and the respondent-management of Haryana Roadways, Ambala. The term of the reference was :

Whether the termination of services of Shri Kishan Singh was justified and in order ? If not, to what relief is he entitled ?

On receiving this reference, the Labour Court, Rohtak issued notices to the parties. The parties appeared and filed pleadings. The case of the workman according to the demand notice and claim statement is that the termination is against the law and the enquiry conducted against the claimant was pre-planned on the instance of Shri Buta Ram, Foreman, who was inimical towards the claimant, and want to ruin the career of the petitioner. He involved the claimant in criminal case of theft in which the claimant was acquitted by the JMFC, Ambala on 4th March, 1978. The enquiry was not conducted under the rules and the enquiry officer was under the influence of Shri Buta Ram. There was an enquiry against the workman before this enquiry in which the workman was not found guilty. Then they made new charges against the workman and the enquiry officer wrongly gave his findings against the claimant. This enquiry was illegal in presence of the first enquiry and the order made on this enquiry was illegal. So the workman is entitled for his reinstatement with full back wages and continuity of service.

The case of the respondent according to his written statement is that the orders of termination are in accordance with the law, and as fact of the file. The allegation against the workman was proved beyond doubt during the course of enquiry and it is incorrect that Shri Buta Ram, Foreman was inimical with the workman. The criminal case was different from this enquiry. The enquiry officer gave the full opportunity to the workman and findings were correct according to the file and the General Manager made the orders according to the findings of the enquiry officer. So the reference may be rejected.

On the pleadings of the parties, the following issues were framed :—

Whether the termination of service of Shri Kishan Singh was justified and in order ? If not, to what relief is he entitled ?

The case was transferred to me,—*vide* Secretary to Government Haryana, Labour and Employment Department, Chandigarh Order No. 1(79)80-1 Lab, dated 20th October, 1981 after recording one evidence of the respondent and I recorded remaining evidence of the management and workman and my findings on the issues are as under :—

Issue No. 1.—The representative of the respondent argued that as stated by Shri Raj Paul, clerk of the respondent as MW-1 Shri Kishan Singh was working as Electrician with the respondent and was suspended on 23rd March, 1973. The order of suspension is Exhibit MW-1/1. The charge-sheet was issued to the workman which is Exhibit MW-1/2. The summary allegation is Ex. MW-1/3. The workman submitted his reply which is Ex. MW-1/4. After this reply the domestic enquiry was constituted against the workman and the Traffic

Manager was appointed as Enquiry Officer who recorded the evidence of the witnesses and gave his finding which is Ex. MW-1/5. The Enquiry Officer gave all opportunities to the workman and observed all procedures of the enquiry. The show-cause notice was also given to the workman after receiving the findings of the enquiry officer which is Ex. MW-1/6. The workman submitted his reply of the show-cause notice which is Ex. MW-1/7 and the services were terminated,—vide Ex. MW-1/1/8, the copy of the judgement, dated 14th February, 1975 is Ex. MW-1/9. The termination of the workman based on the theft. He further argued that the enquiry officer Shri Bishan Dass Bhatia Extra Assistant Transport Controller, Haryana, who was the enquiry officer also came in the witness box as MW-2 and supported the enquiry proceedings. He has stated that he was appointed as enquiry officer by the General Manager, Haryana Roadways, Ambala,—vide letter, dated 17th April, 1974. He sent the notice to the parties for the enquiry. He has further stated in his statement that he gave full opportunity to the workman to cross-examine the witnesses of the prosecution and gave his findings according to the record on the file and he found the workman guilty and after going through the findings of the enquiry officer the General Manager terminated the services of the workman which are justified and the termination is according to the guilt of the workman.

The representative of the workman argued that from the written statement of the respondent nothing is clear. He has simply denied the paras of the claim statement submitted by the workman and put no case except that of enquiry, but the respondent has failed to put the original files of the enquiry in the court. There is no statements of the witnesses on the file of this court. They have simply given the selected papers of the file to conceal the facts from the Court. The workman made an application in this court to call the previous enquiry file which the respondent failed to produce in the court and the workman took the copy of that file after spending the huge money which is Ex. W-1 to W-20 which are the proceedings of the prior enquiry which was conducted by the Assistant Accounts Officer by the orders of Chaudhary Zile Singh, the then General Manager of the Haryana Roadways, Ambala Cantt. in which the enquiry officer gave his findings in favour of the workman and he found the workman not guilty of the charges, which shows that the respondent wants to cancel this fact before this Court and did not put the whole file of the enquiry before this court and refused to submit the previous enquiry file and after the request of the workman and direction of the court. When there is one enquiry against the workman and he was not found guilty in the enquiry then what was the need of second enquiry. There is no reason given in the second enquiry as stated by the workman in his statement as MW-1. He joined the Roadways Service on 1st January, 1959 as helper and promoted as Assistant Electrician on 1st January, 1960 and worked as full Electrician from 1st May, 1962. From 1962 till the date of this allegation against the workman there is no complaint against the workman about any kind and it was due to some enmity with the foreman Shri Buta Singh because he wanted his own man adjusted in his place and want me to transfer to Yamuna Nagar in place of his own man which I did not agree and it started enmity with the workman. The foreman demanded money from the workman which was also the basis of all the charges against the workman. Workman has further stated that in his statement that he was reinstated on 11th January, 1974 on pending enquiry because there was nothing in the enquiry and worked for more than one year before the termination and this Second enquiry. Shri Buta Ram made another attempt to involve him in theft case in which the F.I.R. was lodged and the learned Judicial Magistrate, 1st Class, Ambala acquitted the workman,—vide order Exhibit MW-1/9 because it was also a false allegation against the workman. This shows that the workman involved in the false case by the Foreman and the Second enquiry was got ordered from the General Manager, Haryana Roadways which was an illegal order after the first enquiry in favour of the workman. The workman was an old employee joined the service from the year 1959 and there is no such previous allegations against the workman also shows the conduct of the workman. The General Manager, Haryana Roadways, Ambala should have considered the previous record of the workman before making the order of termination which was not done by him and the order of termination is due to some enmity with the officer.

After hearing the arguments of both the parties, and going through the file, I am of the view that the respondent has failed to prove his case. The respondent has not filed the second enquiry file in full for concealing the facts what the witness has stated before the enquiry officer without which I cannot say that what the witness has stated before the enquiry officer. More over the written statement of the respondent is not clear for their case. They have simply denied the paras of the workman in his written statement and they have also concealed the fact of first enquiry and also did not bring the file even after the direction of the court which shows that his termination was made on a wrong allegation against the workman. The first enquiry officer gave the findings in favour of the workman. Then the respondent should have produced before me the reasons why the second enquiry was ordered, and in the absence of reason the second enquiry was illegal and the termination on which it is based is also illegal and unjustified. So the issue is decided against the respondent and in favour of the workman. The workman is entitled for the reinstatement with continuity of service and with half back wages.

This be read in answer to this reference.

Dated the 25th August, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad.

Endorsement No. 1941, dated 1st September, 1982.

Forwarded (four copies), to the Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad.